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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 378

UNITED STATES OF AMERICA,

Appellant

vs.

JAMES CLARENCE EVANS AND HIS SUCCESSORS IN OFFICE, AS COMMISSIONER OF FINANCE AND TAXATION OF THE STATE OF TENNESSEE,

Appellee

STATEMENT OPPOSING JURISDICTION

Statement by Appellee of Grounds in Opposition to Appellate Jurisdiction of the Supreme Court of the United States Pursuant to Supreme Court Rule 12.

K. HARLAN DODSON, JR.,
Counsel for Appellee.

CUMMINGS & CRABTREE,
WALKER, HOOKER, KEEBLE,
DODSON & HARRIS,
Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 378

ESSO STANDARD OIL COMPANY AND UNITED STATES OF AMERICA,

Appellants,

vs.

JAMES CLARENCE EVANS AND HIS SUCCESSORS IN OFFICE AS COMMISSIONER OF FINANCE AND TAXATION OF THE STATE OF TENNESSEE,

Appellee.

STATEMENT OPPOSING JURISDICTION

Statement by Appellee of Grounds in Opposition to Appellate Jurisdiction of the Supreme Court of the United States Pursuant to Supreme Court Rule 12.

Heretofore, the appellant, Esso Standard Oil Company, filed its petition and order of appeal, the same being filed on August 8, 1952, in the Supreme Court of the State of Tennessee. Thereafter, the record in this cause was certified to the Clerk of the Supreme Court of the United States

by the Clerk of the Supreme Court of the State of Tennessee within the time allowed by Rule 12 of the Rules of the Supreme Court of the United States. The appellee filed its statement of grounds in opposition to appellate jurisdiction of the Supreme Court of the United States.

On October 2, 1952, the appellant, United States of America, an intervenor below, filed its petition for appeal and order allowing its appeal, together with its assignments of error and statement of jurisdiction. The appellee files the following statement of the matters and grounds against the jurisdiction of this Court as asserted by the appellant, United States of America, all as required by Rule 12 of the Rules of this Honorable Court:

Implied Constitutional Immunity

The principle of implied constitutional immunity relied upon by the appellant United States of America to confer appellate jurisdiction upon this Court is frivolous and unsubstantial, the question having been settled by the Supreme Court of the United States in a number of cases adversely to the contention of the appellant here.

The argument proposed by the appellant, United States of America, is the same as the argument proposed by the appellant, Esso Standard Oil Company. Nothing new is contained therein, and, for the sake of brevity, the appellee relies upon its statements, citations and arguments in support of the proposition that this attempted appeal is frivolous and unsubstantial as contained in its statement in opposition to appellate jurisdiction heretofore filed in this cause in response to the appeal of the appellant, Esso Standard Oil Company.

(Appellee's "Statement Opposing Jurisdiction", *Esso Standard Oil Company* v. *James Clarence Evans*, pp. 1-17.)

The statement is made in the petition of the appellant, United States of America, that this Court is entirely free to disregard the designation of the State Court that the gasoline tax is a privilege tax. Suffice it to say, in answer to this ingenious argument that the Supreme Court of the United States, this Honorable Court, has already considered the Tennessee Gasoline Taxing Act and found in the case of *N. C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 77 L. Ed. 730, that this Act was a privilege tax exacted for the privilege of engaging in the business of storing gasoline. It is for this reason, as pointed out before in our statement opposing jurisdiction in the Esso Standard Oil Company appeal, that the case of *United States* v. *Allegheny County*, 322 U. S. 174, 64 S. Ct. 908, 88 L. Ed. 1209, has no application in the instant case.

II

The Fourteenth Amendment

The assertion that the equal protection clause of the Fourteenth Amendment was violated is insufficient to confer jurisdiction upon this Court for two reasons: In the first place, this question was not properly raised in the State Court nor decided by it; and in the second place, it is clearly a frivolous and unsubstantial assertion.

Again, nothing new is brought forth in the statement of jurisdiction filed by the United States of America in support of the appellant's contention that the equal protection clause of the Constitution has been violated by the finding of the Supreme Court of the State of Tennessee that a factual situation existed in the case of *Tennessee Oil Company* v. *Commissioner*, 178 Tenn. (14 Beeler) 683, 162 S. W. (2d) 1081, app. dis. 63 S. Ct. 34, 317 U. S. 588, 87 L. Ed. 482, which did not exist in the instant case so that the two cases were completely distinguishable; and

we thereupon respectfully refer, for the sake of brevity, to the statements, citations and arguments contained in our statement opposing jurisdiction heretofore filed upon the appeal of Esso Standard Oil Company.

(Appellee's "Statement Opposing Jurisdiction", *Esso Standard Oil Company* v. *James Clarence Evans*, pp. 15-17.)

Conclusion

WHEREFORE, we respectfully submit that the principles sought to be relied upon by United States of America to confer appellate jurisdiction upon this Court are frivolous, unsubstantial and not properly presented so that the appeal should be denied.

Dated October 11, 1952.

Respectfully submitted,

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